



ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL DEFERRED PROSECUTION GUIDELINES

October 7, 2016

GENERAL

Pursuant to A.R.S. § 11-362(A) the following guidelines for the conduct of any deferred prosecution program as defined in A.R.S. § 11-361 ("Program") within the State of Arizona are hereby promulgated. Programs shall comply with Arizona Revised Statutes Title 11, Chapter 2, Article 11 (A.R.S. §11-361 et seq.) The guidelines are intended to provide *minimum* standards for conducting a Program. Nothing contained herein should be interpreted so as to prevent any individual prosecutor from adding provisions which make the Program in that jurisdiction more or less restrictive.

PROGRAM STANDARDS

A. CRITERIA FOR IDENTIFYING PARTICIPANTS

Pursuant to A.R.S. § 11-361, defendants eligible for diversion are those persons who have not been previously convicted of any of the following:

1. A serious offense, as defined in A.R.S. § 13-706;
2. An offense under Title 13, Chapter 14;
3. A dangerous offense, as defined in A.R.S. § 13-105;
4. A dangerous crime against children, as defined in A.R.S. § 13-705;
5. Three or more times of personal possession of a controlled substance (as defined in A.R.S. § 36-2501) or personal possession of drug paraphernalia (as defined in A.R.S. § 13-3415).

A records check, including ACIC and NCIC, will be made on all defendants being considered for the Program to ensure eligibility. Also, each defendant will personally avow that he is eligible for the Program.

The prosecutor will confer with the victim, if any, about the potential resolution of the case through the Program. Additionally, all Programs involving defendants that have been formally charged shall be operated in conformance with Rule 38 of the Arizona Rules of Criminal Procedure.

B. SUGGESTED PROGRAM CONTENT

The structure and scope of each county's Program will be governed by the financial and community resources available. With that limitation in mind, every effort should be made to provide the following suggested components in each Program, within the discretion of the prosecutor:

1. Screening Guidelines: Each case should be thoroughly reviewed to determine:
 - a. Culpability in the charged offense;
 - b. Extent of involvement in illegal behavior;
 - c. Risk of re-arrest;
 - d. Personal, social, and welfare needs;
 - e. Likely benefits from an appropriate treatment plan;
 - f. Availability of the resources needed to address the particular defendant.
2. Supervision: Defendant should be seen by a counselor or Program supervisor on a regular basis for the first three months of the Program. In addition, each defendant should be re-assessed on a quarterly basis to determine the type of supervision necessary.
3. Referral to Social Services: Any defendant in need of wraparound services, such as employment or education should be referred to an appropriate community program.
4. Restitution: Before successful completion of the Program can be accomplished, payment in full of the victim's loss should be made.
5. Community Service Work: A defendant should be expected to perform a minimum of forty (40) hours of community service work.
6. Utilization of Existing Community Resources: The Program staff should develop contacts with related social service agencies and make appropriate referrals to mental health, welfare, financial, substance abuse treatment or employment agencies.

C. COURTESY SUPERVISION

1. For defendants residing in a county other than the county with jurisdiction, but which also has a Deferred Prosecution Program, courtesy supervision may be arranged by mutual agreement between the programs.
2. The originating county will maintain jurisdiction over the deferred prosecution.
3. Full disclosure through a bi-lateral release of confidential information will be made between the cooperating Programs. Defendant shall execute any releases necessary to accomplish such disclosure.

4. Changes in treatment plans will be made through consultation between the cooperating Programs.
5. The supervising Program will make appropriate referrals to community agencies to meet the conditions and obligations of participation.
6. The supervising Program will monitor the defendant's progress through regular status reports and will provide copies of such reports to the originating Program within ten days of each status conference.
7. Any costs resulting from the courtesy supervision shall be paid by defendant.

D. SUSPENSION OF PROSECUTION

Pursuant to Rule 38 of the Rules of Criminal Procedure, the defendant, and counsel, if any, shall sign Consent to Participate in Diversion and Waiver of Speedy Trial forms when referred to the Program. The forms and a Motion for Suspension of Prosecution will be submitted by the prosecutor to the court as notice of the suspension of prosecution for a period of up to two years. The court may set periodic appearances to obtain reports on the status of the case.

E. TERMINATION PROCEDURES

1. Successful Termination: Upon the defendant's completion of the terms and obligations imposed by the Program, including payment of restitution, if any, the prosecutor will file with the court a Motion to Dismiss without Prejudice.
2. Unsuccessful Termination:
 - a. The prosecutor may terminate a defendant from the Program if defendant:
 - i. Is not accepted into an agreed upon treatment plan program;
 - ii. Withdraws from a treatment plan program before completion of treatment;
 - iii. Is arrested for or charged with a new offense;
 - iv. Fails to complete the terms and conditions of the Program within the agreed upon time frame; or,
 - v. Violates any of the terms of the Program.
 - b. In the event a Program supervisor reports to the prosecutor that a defendant has not complied with the conditions and obligations of the program, the prosecutor will file a Notice to Resume Prosecution and serve it on the defendant pursuant to Rule 35.5 of the Rules of Criminal Procedure. Prosecution will resume at the time the suspension of prosecution is vacated by the court.

F. FEES.

Program fees may be established pursuant to A.R.S. § 11-251.08 or similar authority. Fees shall be attributable to a defray or cover the expense of the Program services for which the fee is assessed. A fee shall not exceed the actual cost of the Program product or service.

G. MANDATED REPORTING

Pursuant to A.R.S. § 11-362, each county attorney operating a Program will maintain statistical records related to that Program, which must include, at a minimum, the following:

1. The number of persons who were enrolled in the Program during the previous fiscal year;
2. The number of persons who successfully completed the Program in the previous fiscal year;
3. If available, the number of persons who were enrolled in the Program during the previous fiscal year and who were subsequently convicted of a new felony offense.

By August 1 of each year, each county attorney will provide the above statistical information along with an evaluation of the Program to the Arizona Prosecuting Attorneys' Advisory Council ("APAAC"). If the county attorney has more than one Program, then this information should be kept and reported separately for each Program. APAAC will compile this information into a comprehensive report and submit it to the President of the Senate, the Speaker of the House, and the Joint Legislative Budget Committee by September 15 of each year for the previous fiscal year.